

Audra M Mori, Bar No. 162850
Amori@perkinscoie.com
Katherine M. Dugdale, Bar No. 168014
Kdugdale@perkinscoie.com
PERKINS COIE LLP
1888 Century Park East, Suite 1700
Los Angeles, CA 90067
Telephone: 310.788.9900
Facsimile: 310.788.3399

Attorneys for Plaintiff
MICROSOFT CORPORATION

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICROSOFT CORPORATION, a
Washington corporation

Plaintiff,

v.

SOFTWAREAU.COM, a business
entity of unknown form; and DOES
1-5,

Defendants.

Case No. 15-cv-8019

COMPLAINT FOR:

(1) COPYRIGHT INFRINGEMENT;
(2) FEDERAL TRADEMARK
INFRINGEMENT;
(3) FALSE DESIGNATION OF ORIGIN,
FALSE DESCRIPTION AND FALSE
REPRESENTATION;
(4) COMMON LAW UNFAIR
COMPETITION;
(5) IMPOSITION OF A
CONSTRUCTIVE TRUST; AND
(6) AN ACCOUNTING

COMPLAINT

Microsoft Corporation (“Microsoft”) brings this action against Defendant Softwareau.com, a business entity of unknown form, and Does 1-5 (collectively “Defendants”), alleging that they engaged in copyright and trademark infringement; false designation of origin, false description and representation; and unfair competition. Microsoft seeks damages, an accounting, the imposition of a constructive trust upon Defendants’ illegal profits, and injunctive relief.

THE PARTIES

1
2 1. Microsoft is a Washington corporation with its principal place of
3 business located in Redmond, Washington. Microsoft develops, markets,
4 distributes and licenses computer software.

5 2. Upon information and belief, defendant Softwareau.com is an entity of
6 unknown form that does business through Internet websites and that advertises an
7 address in Diamond Bar, California. Softwareau.com is engaged in the business of
8 advertising, marketing, copying, offering, and/or distributing software, including
9 purported Microsoft software.

10 3. Upon information and belief, Does 1 through 5 (a) personally
11 participated in and/or (b) had the right and ability to supervise, direct and control
12 the wrongful conduct alleged in this Complaint, and (c) derived direct financial
13 benefit from that wrongful conduct. Upon information and belief, Does 1 through 5
14 (a) have an apparent partnership or authority to bind Softwareau.com in
15 transactions, or (b) exercised joint ownership or control over the infringing items
16 alleged in this Complaint. Upon information and belief, Does 1 through 5 are
17 individuals or entities that transact substantial business in this district.

JURISDICTION

18
19 4. This Court has subject matter jurisdiction over Microsoft's claims for
20 trademark infringement, copyright infringement, and related claims pursuant to 15
21 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

22 5. This Court has supplemental jurisdiction over Microsoft's claims
23 arising under the laws of California pursuant to 28 U.S.C. § 1367(a) because these
24 claims are so related to Microsoft's claims under federal law that they form part of
25 the same case or controversy and derive from a common nucleus of operative fact.

VENUE

26
27 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and §
28 1400(a) because (a) Defendants reside in the Central District of California, and/or

(b) a substantial part of the events giving rise to Microsoft's claims occurred in the Central District of California.

FACTS COMMON TO ALL CLAIMS

7. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Depending on the version, Microsoft's software programs are distributed recorded on discs, made available by Microsoft for download, or made available by Microsoft for pre-installation. Microsoft software programs are distributed together with associated proprietary materials such as user's guides, user's manuals, end user license agreements, Certificates of Authenticity, product keys and other components.

8. A Microsoft product key is a 25-character alphanumeric code, arranged in five groups of five characters each. Because Microsoft software is capable of being installed on a potentially unlimited number of computers, Microsoft uses product keys as one means of preventing or at least restricting the unauthorized copying of its software.

9. Office 2013: Microsoft Office 2013 ("Office 2013") is a suite of popular Microsoft software programs. Microsoft holds a valid copyright in Office 2013 that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Office 2013, bearing the number TX 7-649-882, is attached hereto as Exhibit 1 and is incorporated by reference. Office 2013 includes the following popular Microsoft software programs:

A. Access 2013: Microsoft Access 2013 is a program that allows users to create and manipulate databases and store data. Microsoft holds a valid copyright in Microsoft Access 2013 that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Access 2013, bearing the number TX 7-751-913, is attached hereto as Exhibit 2 and is incorporated by reference.

1 B. Excel 2013: Microsoft Excel 2013 is a program that allows
2 users to create spreadsheets, perform calculations, and store numerical data.
3 Microsoft holds a valid copyright in Microsoft Excel 2013 that was duly and
4 properly registered with the United States Copyright Office. A true and correct
5 copy of the Copyright Registration Certificate for Microsoft Excel 2013, bearing
6 the number TX 7-751-917, is attached hereto as Exhibit 3 and is incorporated by
7 reference.

8 C. OneNote 2013: Microsoft OneNote 2013 is a program that
9 allows users to organize text, audio, video and notes in one spot. Microsoft holds a
10 valid copyright in OneNote 2013 that was duly and properly registered with the
11 United States Copyright Office. A true and correct copy of the Registration
12 Certificate for Microsoft OneNote 2013, bearing the number TX 7-751-910, is
13 attached hereto as Exhibit 4 and is incorporated by reference.

14 D. Outlook 2013: Microsoft Office Outlook 2013 is a program that
15 allows users and networked teams to create and manage calendars and contacts.
16 Microsoft holds a valid copyright in Microsoft Office Outlook 2013 that was duly
17 and properly registered with the United States Copyright Office. A true and correct
18 copy of the Copyright Registration Certificate for Microsoft Office Outlook 2013,
19 bearing the number TX 7-700-066, is attached hereto as Exhibit 5 and is
20 incorporated by reference.

21 E. PowerPoint 2013: Microsoft PowerPoint 2013 is a program that
22 allows users to create, organize, and present overhead and slide presentations.
23 Microsoft holds a valid copyright in Microsoft PowerPoint 2013 that was duly and
24 properly registered with the United States Copyright Office. A true and correct
25 copy of the Copyright Registration Certificate for Microsoft PowerPoint 2013,
26 bearing the number TX 7-751-911, is attached hereto as Exhibit 6 and is
27 incorporated by reference.
28

1 F. Publisher 2013: Microsoft Publisher 2013 is a program that
 2 allows users to create, customize, and publish materials such as newsletters.
 3 Microsoft holds a valid copyright in Microsoft Publisher 2013 that was duly and
 4 properly registered with the United States Copyright Office. A true and correct
 5 copy of the Copyright Registration Certificate for Microsoft Publisher 2013,
 6 bearing the number TX 7-674-731, is attached hereto as Exhibit 7 and is
 7 incorporated by reference.

8 G. Word 2013: Microsoft Word 2013 is a program that allows
 9 users to create and edit documents. Microsoft holds a valid copyright in Microsoft
 10 Word 2013 that was duly and properly registered with the United States Copyright
 11 Office. A true and correct copy of the Copyright Registration Certificate for
 12 Microsoft Word 2013, bearing the number TX 7-674-730, is attached hereto as
 13 Exhibit 8 and is incorporated by reference.

14 H. InfoPath: Microsoft InfoPath is a computer program that allows
 15 users to collect and manage data using electronic forms. Microsoft holds a valid
 16 copyright in Microsoft InfoPath 2010 that was duly and properly registered with the
 17 United States Copyright Office. A true and correct copy of the Copyright
 18 Registration Certificate for Microsoft InfoPath 2010, bearing the number TX 7-206-
 19 468, is attached hereto as Exhibit 9 and is incorporated by reference.

20 10. Microsoft has also duly and properly registered a number of
 21 trademarks and a service mark in the United States Patent and Trademark Office on
 22 the Principal Register, including, but not limited to:

23 A. "MICROSOFT," Trademark and Service Mark Registration No.
 24 1,200,236;

25 B. "MICROSOFT," Trademark Registration No. 1,256,083;

26 C. "MICROSOFT OFFICE," Trademark Registration No.
 27 3,625,391;

28 D. OFFICE 2012 DESIGN, Trademark Registration No.4,459,826;

- 1 E. "ACCESS," Trademark Registration No. 3,238,869;
2 F. ACCESS LAUNCH ICON, Trademark Registration No.
3 4,365,955;
4 G. "EXCEL," Trademark Registration No. 2,942,050;
5 H. EXCEL LAUNCH ICON, Trademark Registration No.
6 4,355,451;
7 I. "INFOPATH," Trademark Registration No. 2,890,260;
8 J. INFOPATH LAUNCH ICON, Trademark Registration No.
9 4,355,447;
10 K. "LYNC," Trademark Registration No. 4,003,879;
11 L. LYNC LAUNCH ICON, Trademark Registration No.
12 4,433,545;
13 M. "ONENOTE," Trademark Registration No. 2,844,710;
14 N. ONENOTE LAUNCH ICON, Trademark Registration No.
15 4,351,584;
16 O. "OUTLOOK," Trademark Registration No. 2,188,125;
17 P. OUTLOOK LAUNCH ICON, Trademark Registration No.
18 4,355,446;
19 Q. "POWERPOINT," Trademark Registration No. 1,475,795;
20 R. POWERPOINT LAUNCH ICON, Trademark Registration No.
21 4,385,388;
22 S. PUBLISHER LAUNCH ICON, Trademark Registration No.
23 4,355,448; and
24 T. WORD LAUNCH ICON, Trademark Registration No.
25 4,355,444;

26 True and correct copies of the Trademark Registrations for A through T
27 above are attached hereto as Exhibits 10 through 29, respectively, and are
28 incorporated by reference.

Defendants' Infringement

11. Defendants advertised, marketed, copied, offered, and/or distributed unauthorized copies of Microsoft software and/or components after Microsoft notified them of the consequences of infringing Microsoft's copyrights, trademarks and/or service mark.

12. On information and belief, Defendants advertise, market, copy, offer, and/or distribute purported Microsoft software. In their website advertisements, Defendants use copies of Microsoft's trademarks and copyrighted works without authorization, misappropriating and/or infringing Microsoft's copyrights, advertising ideas, style of doing business, slogans, trademarks and/or service mark. Defendants indicate that they are distributing genuine Microsoft software, including but not limited to downloadable versions of Microsoft Office software. However, the Microsoft software and components distributed by Defendants are actually unauthorized and infringing.

13. In February 2014, an investigator saw that Defendants were offering Microsoft Office 2013, indicating that it would be distributed by digital download. The investigator placed an order for the Office 2013. He received an unauthorized product key for Office 2013 software, along with a link to a website from which Office 2013 could be downloaded, from Defendants.

14. By letter dated March 4, 2014, Microsoft put Defendants on notice that they were distributing (1) unauthorized product keys for Microsoft software and/or (2) unauthorized copies of Microsoft software by digital download. Microsoft asked Defendants to cease and desist from all infringing activity.

15. Thereafter, in October 2014, an investigator saw that Defendants were offering Microsoft Office 2013, indicating that it would be distributed by digital download. The investigator placed an order for the Office 2013. He received an unauthorized product key for Office 2013 software, along with a link to a website from which Office 2013 could be downloaded, from Defendants.

16. By using unauthorized product keys and links distributed by Defendants, Defendants' customers were able to make counterfeit and infringing copies of Microsoft software, including but not limited to Office 2013 software.

17. On information and belief, Defendants have been and continue to be involved in advertising, marketing, copying, offering, and/or distributing counterfeit and infringing copies of a variety of Microsoft's software programs and/or related components to unidentified persons or entities.

18. On information and belief, Defendants have committed and are continuing to commit acts of copyright and trademark infringement against Microsoft. On information and belief, at a minimum, Defendants were willfully blind and acted in reckless disregard of Microsoft's registered copyrights, trademarks and service marks.

19. On information and belief, Microsoft has been harmed by Defendants’ activities, including their advertising activities and unauthorized use of Microsoft’s copyright protected material, and the unauthorized use of Microsoft’s marks to describe the items that Defendants are distributing.

First Claim
[Copyright Infringement – 17 U.S.C. § 501, et seq.]
Against Defendants

20. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 19, inclusive.

21. Microsoft is the sole owner of numerous copyrights, including but not limited to Microsoft Office 2013, Word 2013, Excel 2013, PowerPoint 2013, OneNote 2013, Outlook 2013, Publisher 2013, Access 2013, and InfoPath 2010, and is the sole owner of the corresponding copyrights and Certificates of Registration.

22. Defendants have infringed the copyrights in Microsoft's software, including but not limited to Office 2013, Word 2013, Excel 2013, PowerPoint

1 2013, OneNote 2013, Outlook 2013, Publisher 2013, Access 2013, and InfoPath
2 2010 by advertising, marketing, copying, offering, and/or distributing infringing
3 materials in the United States of America without approval or authorization from
4 Microsoft.

5 23. At a minimum, Defendants acted with willful blindness to and in
6 reckless disregard of Microsoft's registered copyrights.

7 24. As a result of their wrongful conduct, Defendants are liable to
8 Microsoft for direct, contributory and/or vicarious copyright infringement. 17
9 U.S.C. § 501. Microsoft has suffered damages. Microsoft is entitled to recover
10 damages, which include any and all profits Defendants have made as a result of
11 their wrongful conduct. 17 U.S.C. § 504. Alternatively, Microsoft is entitled to
12 statutory damages under 17 U.S.C. § 504(c).

13 25. In addition, for the reasons set forth above, the award of statutory
14 damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

15 26. Microsoft is also entitled to injunctive relief pursuant to 17 U.S.C. §
16 502 and to an order impounding any and all infringing materials pursuant to 17
17 U.S.C. § 503. Microsoft has no adequate remedy at law for Defendants' wrongful
18 conduct because, among other things, (a) Microsoft's copyrights are unique and
19 valuable property which have no readily determinable market value, (b)
20 Defendants' infringement harms Microsoft such that Microsoft could not be made
21 whole by any monetary award, and (c) Defendants' wrongful conduct, and the
22 resulting damage to Microsoft, is continuing.

23 27. Microsoft is also entitled to recover its attorneys' fees and costs of suit.
24 17 U.S.C. § 505.

25 **Second Claim**

26 **[Trademark Infringement – 15 U.S.C. § 1114]**
27 **Against Defendants**
28

1 28. Microsoft repeats and incorporates by this reference each and every
2 allegation set forth in paragraphs 1 through 27, inclusive.

3 29. Defendants' activities constitute infringement of Microsoft's federally
4 registered trademarks and service mark in violation of the Lanham Trademark Act,
5 including but not limited to 15 U.S.C. § 1114(1).

6 30. Because Microsoft advertises, markets, distributes, and licenses its
7 software under the trademarks and service mark described in this Complaint, these
8 trademarks and service mark are the means by which Microsoft's software is
9 distinguished from the software and related items of others in the same or related
10 fields.

11 31. Because of Microsoft's long, continuous, and exclusive use of these
12 trademarks and service mark, they have come to mean, and are understood by
13 customers, end users, and the public to signify, software programs or services of
14 Microsoft.

15 32. The infringing materials that Defendants have and are continuing to
16 advertise, market, copy, offer, and/or distribute are likely to cause confusion,
17 mistake, or deception as to their source, origin, or authenticity.

18 33. Further, Defendants' activities are likely to lead the public to conclude,
19 incorrectly, that the infringing materials that Defendants are advertising, marketing,
20 copying, offering, and/or distributing originate with or are authorized by Microsoft,
21 to the damage and harm of Microsoft, its licensees, and the public.

22 34. Upon information and belief, Defendants advertised, marketed, copied,
23 offered and/or distributed infringing material with the purposes of misleading or
24 confusing customers and the public as to the origin and authenticity of the
25 infringing materials and of trading upon Microsoft's business reputation.

26 35. Defendants had reason to know about infringement of Microsoft's
27 federally registered trademarks and service mark and caused, induced, or materially
28 contributed to it.

1 36. At a minimum, Defendants acted with willful blindness to and in
2 reckless disregard of Microsoft's registered marks.

3 37. As a result of their wrongful conduct, Defendants are liable to
4 Microsoft for direct, contributory and/or vicarious trademark infringement. 15
5 U.S.C. § 1114(1). Microsoft has suffered damages. Microsoft is entitled to recover
6 damages, which include any and all profits Defendants have made as a result of
7 their wrongful conduct. 15 U.S.C. § 1117(a).

8 38. In addition, because of Defendants' infringement of Microsoft's
9 trademarks and service mark as described above, the award of actual damages and
10 profits should be trebled pursuant to 15 U.S.C. § 1117(b). Alternatively, Microsoft
11 is entitled to statutory damages under 15 U.S.C. § 1117(c).

12 39. Microsoft is also entitled to injunctive relief pursuant to 15 U.S.C. §
13 1116(a) and to an order compelling the impounding of all infringing materials
14 advertised, marketed, copied, offered and/or distributed by Defendants pursuant to
15 15 U.S.C. § 1116, subsections (a) and (d)(1)(A). Microsoft has no adequate remedy
16 at law for Defendants' wrongful conduct because, among other things, (a)
17 Microsoft's trademarks and service mark are unique and valuable property which
18 have no readily determinable market value, (b) Defendants' infringement
19 constitutes harm to Microsoft's such that Microsoft could not be made whole by
20 any monetary award, (c) if Defendants' wrongful conduct is allowed to continue,
21 the public is likely to become further confused, mistaken, or deceived as to the
22 source, origin or authenticity of the infringing materials, and (d) Defendants'
23 wrongful conduct, and the resulting damage to Microsoft, is continuing.

24 40. Microsoft is also entitled to recover its attorneys' fees and costs of suit.
25 15 U.S.C. § 1117.

Third Claim

**[False Designation Of Origin, False Description And Representation –
15 U.S.C. § 1125 et seq.]
Against Defendants**

41. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 40, inclusive.

42. Because Microsoft advertises, markets, distributes, and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software or products of others in the same field or related fields.

43. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

44. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software programs.

45. Defendants' wrongful conduct includes the use of Microsoft's marks, name, and/or imitation visual designs, specifically displays, logos, icons, graphic designs, and/or packaging virtually indistinguishable from Microsoft visual designs, in connection with their goods and services.

46. Upon information and belief, Defendants engaged in such wrongful conduct with the purpose of misleading or confusing customers and the public as to the origin and authenticity of the goods and services advertised, marketed, copied, offered and/or distributed in connection with Microsoft's marks, name, and imitation visual designs, and of trading upon Microsoft's goodwill and business reputation. Defendants' conduct constitutes (a) false designation of origin, (b) false or misleading description, and (c) false or misleading representation that the

1 imitation visual images originate from or are authorized by Microsoft, all in
2 violation of § 43(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).

3 47. Defendants' wrongful conduct is likely to continue unless restrained
4 and enjoined.

5 48. As a result of Defendants' wrongful conduct, Microsoft has suffered
6 and will continue to suffer damages. Microsoft is entitled to injunctive relief and to
7 an order compelling the impounding of all imitation marks and visual designs being
8 used, advertised, marketed, copied, offered and/or distributed by Defendants.
9 Microsoft has no adequate remedy at law for Defendants' wrongful conduct
10 because, among other things, (a) Microsoft's marks, name and visual designs are
11 unique and valuable property which have no readily-determinable market value, (b)
12 Defendants' advertising, marketing, copying, and/or distribution of imitation visual
13 designs constitutes harm to Microsoft such that Microsoft could not be made whole
14 by any monetary award, and (c) Defendants' wrongful conduct, and the resulting
15 damage to Microsoft, are continuing.

16 **Fourth Claim**

17 **[California Common Law Unfair Competition]**
18 **Against Defendants**

19 49. Microsoft repeats and incorporates by this reference each and every
20 allegation set forth in paragraphs 1 through 48, inclusive.

21 50. The acts and conduct of Defendants as alleged above in this Complaint
22 constitute unfair competition pursuant to the common law of the State of California.

23 51. The acts and conduct of Defendants are likely to cause confusion and
24 mistake among customers, end users and the public as to the origin or association of
25 Defendants' infringing Microsoft software. These acts and conduct are likely to
26 lead the public to conclude, incorrectly, that the infringing Microsoft software
27 copied, distributed, solicited for distribution, offered, advertised and marketed by
28

1 Defendants originate with, are sponsored by, or are authorized by Microsoft, to the
2 damage and harm of Microsoft, its licensees and the public.

3 52. Defendants' conduct as alleged above has damaged Microsoft and
4 resulted in an illicit gain of profit to Defendants in an amount that is unknown at the
5 present time.

6 **Fifth Claim**
7 **[For Imposition Of A Constructive Trust Upon Illegal Profits]**
8 **Against Defendants**

9 53. Microsoft repeats and incorporates by this reference each and every
10 allegation set forth in paragraphs 1 through 52, inclusive.

11 54. Defendants' conduct constitutes deceptive and wrongful conduct in the
12 nature of passing off the infringing materials as genuine Microsoft software or
13 related components approved or authorized by Microsoft.

14 55. By virtue of Defendants' wrongful conduct, Defendants have illegally
15 received money and profits that rightfully belong to Microsoft.

16 56. Upon information and belief, Defendants hold the illegally received
17 money and profits in the form of bank accounts, real property, or personal property
18 that can be located and traced.

19 57. Defendants hold the money and profits they have illegally received as
20 constructive trustees for the benefit of Microsoft.

21 **Sixth Claim**
22 **[Accounting]**
23 **Against Defendants**

24 58. Microsoft repeats and incorporates by this reference each and every
25 allegation set forth in paragraphs 1 through 57, inclusive.

26 59. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. §
27 1117, to recover any and all profits of Defendants that are attributable to their acts
28 of infringement.

60. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.

61. The amount of money due from Defendants to Microsoft is unknown to Microsoft and cannot be ascertained without a detailed accounting by Defendants of the precise number of units of infringing material advertised, marketed, copied, offered and/or distributed by Defendants.

PRAAYER FOR RELIEF

WHEREFORE, Microsoft respectfully requests judgment as follows:

(1) That the Court enter a judgment against Defendants as indicated below:

(a) that Defendants have willfully infringed Microsoft's rights in its federally registered copyrights, in violation of 17 U.S.C. § 501, including but not limited to the following:

- (1) TX 7-649-882 (“Office 2013”);
- (2) TX 7-674-730 (“Word 2013”);
- (3) TX 7-751-917 (“Excel 2013”);
- (4) TX 7-751-911 (“PowerPoint 2013”);
- (5) TX 7-751-910 (“OneNote 2013”);
- (6) TX 7-700-066 (“Outlook 2013”);
- (7) TX 7-674-731 (“Publisher 2013”);
- (8) TX 7-751-913 (“Access 2013”); and
- (9) TX 7-206-468 (“InfoPath 2010”);

(b) that Defendants have willfully infringed Microsoft's rights in its federally registered trademarks and service mark, in violation of 15 U.S.C. § 1114, including but not limited to the following:

- (1) 1,200,236 (“MICROSOFT”);
- (2) 1,256,083 (“MICROSOFT”);

- (3) 3,625,391 (“MICROSOFT OFFICE”);
- (4) 4,459,826 (OFFICE 2012 DESIGN);
- (5) 3,238,869 (“ACCESS”);
- (6) 4,365,955 (ACCESS LAUNCH ICON);
- (7) 2,942,050 (“EXCEL”);
- (8) 4,355,451 (EXCEL LAUNCH ICON);
- (9) 2,890,260 (“INFOPATH”);
- (10) 4,355,447 (INFOPATH LAUNCH ICON);
- (11) 4,003,879 (“LYNC”);
- (12) 4,433,545 (LYNC LAUNCH ICON);
- (13) 2,844,710 (“ONENOTE”);
- (14) 4,351,584 (ONENOTE LAUNCH ICON);
- (15) 2,188,125 (“OUTLOOK”);
- (16) 4,355,446 (OUTLOOK LAUNCH ICON);
- (17) 1,475,795 (“POWERPOINT”);
- (18) 4,385,388 (POWERPOINT LAUNCH ICON);
- (19) 4,355,448 (PUBLISHER LAUNCH ICON); and
- (20) 4,355,444 (WORD LAUNCH ICON);

(c) that Defendants have committed and are committing acts of false designation of origin, false or misleading description of fact, and false or misleading representation against Microsoft, in violation of 15 U.S.C. § 1125(a);

(d) that Defendants have engaged in unfair competition in violation of California common law; and

(e) that Defendants have otherwise injured the business reputation and business of Microsoft by the acts and conduct set forth in this Complaint.

(2) That the Court issue injunctive relief against Defendants, and that Defendants, their officers, agents, servants, employees, and all others in active concert or participation with Defendants, be enjoined and restrained from:

(a) imitating, copying, or making any other infringing use or infringing distribution of the software programs, components, end user license agreements (“EULA”), Certificates of Authenticity (“COAs”) and/or items protected by the following copyright Certificate Registration Nos.:

- (1) TX 7-649-882 (“Office 2013”);
- (2) TX 7-674-730 (“Word 2013”);
- (3) TX 7-751-917 (“Excel 2013”);
- (4) TX 7-751-911 (“PowerPoint 2013”);
- (5) TX 7-751-910 (“OneNote 2013”);
- (6) TX 7-700-066 (“Outlook 2013”);
- (7) TX 7-674-731 (“Publisher 2013”);
- (8) TX 7-751-913 (“Access 2013”); and
- (9) TX 7-206-468 (“InfoPath 2010”);

or the software programs, components and/or items protected by Microsoft’s registered trademarks and service mark, including, but not limited to, the following Trademark Registration Nos.:

- (1) 1,200,236 (“MICROSOFT”);
- (2) 1,256,083 (“MICROSOFT”);
- (3) 3,625,391 (“MICROSOFT OFFICE”);
- (4) 4,459,826 (OFFICE 2012 DESIGN);
- (5) 3,238,869 (“ACCESS”);
- (6) 4,365,955 (ACCESS LAUNCH ICON);
- (7) 2,942,050 (“EXCEL”);
- (8) 4,355,451 (EXCEL LAUNCH ICON);
- (9) 2,890,260 (“INFOPATH”);
- (10) 4,355,447 (INFOPATH LAUNCH ICON);
- (11) 4,003,879 (“LYNC”);
- (12) 4,433,545 (LYNC LAUNCH ICON);

1 (13) 2,844,710 (“ONENOTE”);

2 (14) 4,351,584 (ONENOTE LAUNCH ICON);

3 (15) 2,188,125 (“OUTLOOK”);

4 (16) 4,355,446 (OUTLOOK LAUNCH ICON);

5 (17) 1,475,795 (“POWERPOINT”);

6 (18) 4,385,388 (POWERPOINT LAUNCH ICON);

7 (19) 4,355,448 (PUBLISHER LAUNCH ICON); and

8 (20) 4,355,444 (WORD LAUNCH ICON);

9 and any other items or works now or hereafter protected by any Microsoft
10 trademark or copyright;

11 (b) manufacturing, assembling, producing, distributing, offering for
12 distribution, circulating, selling, offering for sale, advertising, importing,
13 promoting, or displaying any software program, component, EULA, COA and/or
14 item bearing any simulation, reproduction, counterfeit, copy, or colorable imitation
15 of any of Microsoft’s registered trademarks, service mark, or copyrights, including,
16 but not limited to, the Trademark, Service Mark, and Copyright Registration
17 Numbers listed in Sections (2)(a) above;

18 (c) using any simulation, reproduction, counterfeit, copy, or
19 colorable imitation of Microsoft’s registered trademarks, service mark, or copyright
20 including, but not limited to the Trademark, Service Mark, and Copyright
21 Registration Numbers listed in Section (2)(a) above, in connection with the
22 manufacture, assembly, production, distribution, offering for distribution,
23 circulation, sale, offering for sale, import, advertisement, promotion, or display of
24 any software program, component, EULA, COA, and/or item not authorized or
25 licensed by Microsoft;

26 (d) using any false designation of origin or false or misleading
27 description or false or misleading representation that can or is likely to lead the
28 trade or public or individuals erroneously to believe that any software program,

1 component, and/or item has been manufactured, assembled, produced, distributed,
2 offered for distribution, circulation, sold, offered for sale, imported, advertised,
3 promoted, displayed, licensed, sponsored, approved, or authorized by or for
4 Microsoft, when such is not true in fact;

5 (e) engaging in any other activity constituting an infringement of
6 any of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's
7 rights in, or right to use or to exploit, these trademarks, service mark, and/or
8 copyrights, including the distribution of any unauthorized product keys or others
9 components which would facilitate (a) through (d) above; and

10 (f) assisting, aiding, or abetting any other person or business entity
11 in engaging in or performing any of the activities referred to in subparagraphs (a)
12 through (e) above.

13 (3) That the Court enter an order pursuant to 15 U.S.C. § 1116(a)(d)(1)(A)
14 and 17 U.S.C. § 503 impounding all counterfeit and infringing copies of purported
15 Microsoft software and/or materials bearing any of Microsoft's trademarks or
16 service mark, and any related items, including business records, that are in
17 Defendants' possession or under their control;

18 (4) That the Court enter an order declaring that Defendants hold in trust,
19 as constructive trustees for the benefit of Microsoft, their illegal profits obtained
20 from the distribution of counterfeit and infringing copies of Microsoft's software,
21 and requiring Defendants to provide Microsoft a full and complete accounting of all
22 amounts due and owing to Microsoft as a result of Defendants' illegal activities.

23 (5) That the Court order Defendants to pay Microsoft's general, special,
24 actual, and statutory damages as follows:

25 (a) Microsoft's damages and Defendants' profits pursuant to 17
26 U.S.C. § 504(b), or alternatively, enhanced statutory damages pursuant to 17 U.S.C.
27 § 504(c), and 17 U.S.C. § 504(c)(2);
28

1 (b) Microsoft's damages and Defendants' profits pursuant to 15
2 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b), or in the alternative,
3 statutory damages pursuant to 15 U.S.C. § 1117(c) for each counterfeit mark; and

4 (c) Microsoft's damages and Defendants' profits pursuant to
5 California common law.

6 (6) That the Court order Defendants to pay to Microsoft both the costs of
7 this action and the reasonable attorneys' fees incurred by it in prosecuting this
8 action; and

9 (7) That the Court grant to Microsoft such other and additional relief as is
10 just and proper.

11 DATED: October 13, 2015

PERKINS COIE LLP

12
13 By: /s/ Audra M. Mori
Audra M. Mori

14 Attorneys for Plaintiff
15 MICROSOFT CORPORATION
16
17
18
19
20
21
22
23
24
25
26
27
28